## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARIE VASQUEZ Claimant	
VS.	Docket No. 195,413
THE BOEING COMPANY - WICHITA	DOCKET NO. 193,413
Respondent )	
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY Insurance Carrier	
AND )	
WORKERS COMPENSATION FUND	

## ORDER

The respondent and insurance carrier request review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on June 1, 1995.

## ISSUES

The Administrative Law Judge granted claimant's request for medical treatment. The respondent and insurance carrier request the Appeals Board to review the issue of whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent. That is the sole issue now before this Board.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the argument of the parties, for purposes of preliminary hearing, the Appeals Board finds as follows:

(1) The Appeals Board has jurisdiction to review these preliminary hearing findings under K.S.A. 44-534a. The issues of whether an employee has sustained an accidental

injury or whether the injury arose out of and in the course of the employee's employment are specifically designated jurisdictional issues in that statute.

(2) Claimant testified she worked in violation of her permanent restriction relating to overhead work and began to experience additional symptomatology during the period beginning September 2, 1994. Claimant also introduced the medical report of Pedro Murati, M.D., that indicates claimant now has rotator cuff strain in the left shoulder and myofascial pain syndrome, both being new diagnoses. Although Dr. Poole's records indicate claimant has not sustained a new injury, they do indicate claimant's symptoms are a continuation of a prior injury.

The Appeals Board finds the claimant has established, for preliminary hearing purposes, that it is more probably true than not that she sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period alleged. The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated June 1, 1995, should be, and hereby is, affirmed.

Dated this	_ day of August, 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Joseph Seiwert, Wichita, Kansas Eric K. Kuhn, Wichita, Kansas Steven L. Foulston, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED.